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C O N F I D E N T I A L SECTION 01 OF 05 VIENTIANE 000364

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DEPARTMENT FOR EAP/MLS
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SUBJECT: UNHCR'S ERIKA FELLER DISCUSSES HMONG ISSUES; LAO
OFFICIALS OFFER NEW APPROACH TO RESOLVE NONG KHAI SITUATION

REF: A. BANGKOK 2251

- [1](#)B. BANGKOK 0596
- [1](#)C. STATE 13095
- [1](#)D. VIENTIANE 0288
- [1](#)E. VIENTIANE 0110
- [1](#)F. 06 VIENTIANE 1205

Classified By: Ambassador Patricia M. Haslach for reasons 1.4 (b) and (d)

[1](#)1. (C) Summary: The visit of UNHCR's lead protection official, Erika Feller, has provided insight into Hmong issues including what may happen to the 152 Hmong (plus three babies) being held in Thailand's Nong Khai Province. Unfortunately, we are concerned UNHCR may be overestimating the ability of the Royal Thai Government (RTG) to get the Government of Laos (GOL) to accept third-country resettlement under UNHCR's mandate. This of course would be the solution desired by the international community and required if Thailand were to live up to its responsibility not to "refoul" UNHCR-recognized refugees. So we were very intrigued to be offered the first Lao attempt to find a compromise -- bring the Nong Khai group back to Laos, and the returnees can apply for legal immigration at Embassies in Vientiane. The Lao proposal, offered by a well-respected Vice Foreign Minister, has its problems, but this may be worth following up. End summary.

UNHCR's ERIKA FELLER

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The 26 children's 5 boys

[1](#)2. (C) UNHCR Assistant High Commissioner For Protection Erika Feller told the like-minded group May 2 that she had had a long meeting that morning with Ambassador Hiem Phommachanh, Lao Vice Minister of Foreign Affairs. During the meeting, she had raised the 5 missing Hmong boys (from the group of 26 Hmong children -- ref E), noting her hope they would be "found" soon. Hiem accepted her point but then complained that no international agency had stepped forward to offer to help reunite the 21 girls with their parents in Laos (i.e., bringing the parents back to Laos from the holding camp in Thailand's Petchabun Province where they are currently located). Why, he asked, did these agencies only want to reunite the families in Thailand? Ms. Feller said she offered UNHCR assistance, but Hiem did not respond to her question.

13. (C) Note: The choice of Hiem as the interlocutor was a positive sign for the Feller visit. A former Ambassador -- recently to Thailand and before that to the United States -- Hiem is the Standing Deputy Head of the External Relations Commission of the Party's Central Committee and also supervises MFA's Press, Personnel, and Inspection Departments. Combining both Party and MFA positions gives Hiem a broader range of authority than those of the other two Vice Foreign Ministers. End note.

The Nong Khai Group -- the Thai View

14. (C) Regarding the 152 (3 babies) still stuck in the Immigration Detention Facility in Thailand's Nong Khai Province (refs B-D), Ms. Feller outlined her attempt to gain Thai approval of a "non-precedent setting, exceptional" agreement to preclude the group from being returned to Laos. Her Thai interlocutors held, for the most part, to a "party line" that the 155 are not refugees -- they are illegal immigrants. Thus their disposition should follow Thai law, not international law. Returning illegal immigrants to their home country is most appropriate and conforms to the Thai-Lao border arrangement. The Thais found it regrettable that UNHCR became involved, causing the resolution of the group's case to be put on hold when the decision should be based on the bilateral border agreement.

15. (C) Moving away from this party line, some Thai officials indicated Thailand wants to resolve the situation so that Thailand does not fall into international disrepute. However, other officials are preoccupied with Thailand's bilateral relationship with Laos and fully implementing the border agreement. Feller said she met a senior official of Thailand's National Security Council (NSC head Prakit Prachaonpachanuk) who said he understood UNHCR's obligation

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and did not want Thailand to have problems internationally as a result of returning the 155 to Laos. He said this needed to be worked out with General Nipat Thonglek who heads the Thai delegation to the Thai-Lao Border Committee.

16. (C) NSC head Prakit arranged for Feller to meet with General Nipat, who ended up telling her "we'll do what you want" according to Feller. General Nipat promised that arrangements to resolve the case of the 155 would be worked out that the upcoming meeting of the Thai-Lao Border Committee now scheduled for May 18. Feller said she suspected the General had been instructed by the NSC to find a solution involving not returning the group to Laos which could be reached at the May 18 meeting as a decision between the two sovereign governments for humanitarian considerations -- i.e., not one resulting from international pressure. Feller said she suggested to the General that the two sides say this is an exceptional situation to help save face. She told the General UNHCR would be happy to support the arrangement.

17. (C) The Thais did tell Feller that Laos is finding it hard to understand why all 155 cannot go to the same destination country (instead of being resettled in three countries as is called for in UNHCR's current planning). Feller responded that it may be possible to "optically" send them all to one country, i.e., by sending them to one location before splitting them to travel to final destinations. She mentioned to the like-minded group that UNHCR has used Romania as a staging area for certain resettlement cases as an example. Feller assessed that the Lao may be concerned that multiple resettlement countries (but especially the United States) will use the presence of elements of the 155 as symbols for continued pressure on the GOL to make progress on human rights.

18. (C) Feller said she did raise conditions for the 155 -- especially the children -- in the Nong Khai holding facility which is severely overcrowded. However the Thais said

putting the people in these conditions was designed as a deterrence -- to send a message to others not to try the same thing (illegally entering Thailand) or they too would be held in these conditions for a long time.

The Nong Khai Group -- The Lao View

¶9. (C) VFM Hiem also gave Ms. Feller the Lao "party line" -- that these were Lao citizens who had illegally immigrated to Thailand, and it is normal practice to want them back. He promised the GOL will treat them peacefully. The UNHCR has no role with the 155 because they are not refugees. The UNHCR's activities in Laos were "concluded" years ago, and that is the end of UNHCR's responsibility for any Lao citizens outside of Laos (implying that UNHCR's departure from Laos marked the end of any recognized insurgency, so any Lao-Hmong entering Thailand since then have no refugee claim to make).

¶10. (C) If the 155 are not returned to Laos, this would be a bad precedent, Hiem continued, since they are victims of people smuggling. Their minds have been manipulated by outside NGOs and Hmong support groups, and they should be dealt with resolutely so as not to encourage further human smuggling. For the Lao, the 155 group is symbolic, and the resolution of this case is seen as a model specifically to set a precedent. Feller says she told Hiem that the Thais might be receptive to an "exceptional" solution, that it would be good if the Lao could help find such a solution, and that she wished they two sides have a good discussion on May 18.

¶11. (C) UNHCR, Feller told Hiem, did not necessarily have to be part of the solution and did not have to talk about the 155 as "refugees". As long as the group is not returned to Laos, UNHCR would consider this a positive outcome and would be willing to support the Thai-Lao solution reached at the May 18 meeting. If however the group is returned to Laos, UNHCR would have no choice but to express concern publicly -- something that the UNHCR would not want to do but would have to do -- and this would not be in the GOL's interest. She noted that Hiem listened carefully to her comments, said he "understood" the UNHCR position, promised to report her suggestions to his superiors, and assured her that the suggestions would be featured in the Thai-Lao Border

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Committee discussions on May 18. (Note: the Lao press reported Hiem telling Feller, among other issues, that the Thai and Lao governments had agreed to return the 155 to Laos. A copy of the article was e-mailed to EAP/MLS.)

Broader Issues

¶12. (C) In a pull-aside at the end of her meeting with Hiem, Feller explained that UNHCR looked at the different range of circumstances of each person requesting its assistance. UNHCR's acceptance reflects recognition of a "humanitarian situation" for that person, not necessarily that the person has been persecuted by the GOL. Many Hmong applicants have been rejected by UNHCR, which tries to find a balance. UNHCR will not react to those Hmong who are not recognized by UNHCR being sent back via the Border Committee process. Explaining UNHCR operates in a global context, Feller promised to send Hiem another copy of the UNHCR-SRV MOU on treatment of Vietnam's Montagnards.

¶13. (C) Feller also admitted to the like-minded group that UNHCR's dealings with the Thais were becoming more complicated. The Thais asked her why UNHCR describes the Lao people it is assisting as being "of concern" since they are illegal immigrants and subject to Thai law. Feller said that "of concern" was overly ambiguous language, and UNHCR needed to consider how to make its designation clearer. UNHCR Bangkok head Hasim Utkan noted the Thais did not accept the proposed screening included in the joint plan of action for

dealing with the Hmong in Petchabun presented to the Thai Government April 19 (ref A). Since these are illegal migrants, the Thais saw no role for UNHCR in resolving their situation.

¶14. (C) Feller said there may be a step-by-step process which would allow screening to take place. The Thais already accept the need to collect bio-data from illegal migrants to verify they are from Laos. The Thais could also ask them at that point whether they want to go home or to a third country and collect other information about their individual situations. Feller admitted that UNHCR needed better criteria to deal not only with the 155 in Nong Khai but also another 255 Lao-Hmong currently in Bangkok who are currently "of concern" to UNHCR.

¶15. (C) Utkan added that currently UNHCR considers for refugee status (or status of being "of concern") those who come to UNHCR's attention through a "filtering system" of referrals from reliable sources including Embassies and journalists. Feller noted that establishing a "country of origin assessment" for Laos is difficult because so much of the available information about conditions for the Hmong in Laos comes from third party sources. In the end, UNHCR has to give the benefit of the doubt to applicants, which leads to RTG complaints.

LAO OFFICIALS =====

DG Yong: Material Support Waiver -----

¶16. (C) At their May 3 lunch, MFA spokesman Yong Chanthalangsy's first question to P/E Chief was about the status of the "amendment to the Patriot Act." Yong said the GOL did not really want any waiver of the material support prohibition for the Hmong because it could send the wrong signal -- but the Lao could understand a waiver for actions before the LPDR was established on 12/02/75 because they understood the "moral responsibility" of the United States toward the Hmong from this earlier period.

DG Yong: A Proposal For the Nong Khai 155 -----

¶17. (C) Yong highlighted that when DPM/FM Thongloun Sisoulith met with Thai FM Nit Pibunsongkhram in Bangkok last month Thongloun promised that no returnee would be prosecuted by the GOL. They have broken Thai laws by illegally immigrating to Thailand, Yong noted, not any Lao law. He commented that the Thais, with a million refugees from Burma on one border, with the unsettled security situation in the south of Thailand, and with the Hmong and other groups, increasingly view these refugee flows in a negative light and as a burden. Thus they are increasing their patrols along their borders to reduce the flows.

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¶18. (C) Yong noted that the GOL had recently met with UNHCR's Erika Feller and had expressed its concern about the political intention behind UNHCR interjecting itself into the Hmong situation "without truly thinking" about what it is doing. Neither Thailand nor Laos is a signatory to the Treaty on Refugees, Yong pointed out, but both are complying with treaty obligations in practice. According to Yong, there is no way to deal with the Hmong in Thailand on a case-by-case basis. The Treaty on Refugees requires a state to take back its citizens if they have violated laws in another country (i.e., the Hmong breaking Thai laws by illegally entering Thailand). Thus Laos has a duty to accept the return of all of the Lao-Hmong who have entered Thailand illegally.

¶19. (C) Yong repeated the Thongloun promise to Nit that once the Hmong return to Laos they will be free citizens. Noting that the Lao had not raised this concept with UNHCR's Feller,

Yong pointed out that any returnees -- after a suitable period of time -- can apply for visas to leave Laos legally if they wish. The GOL does not put returnees under surveillance, Yong claimed, citing the fact that many Hmong resettled from the jungle in lowland villages have soon slipped away and wound up in Thailand's Petchabun holding camp. (Note: this is the first time a GOL official has put forth a proposal which seems crafted to find a compromise which, although bypassing UNHCR's mandate, might be acceptable to the resettlement countries and the larger international community. See also below, para 24.)

¶20. (C) Yong rejected any role for ICRC or other international organizations in monitoring the returnees. He argued that anything that highlights the returnees would be a problem for the GOL in terms of the reaction of the surrounding neighbors, many of whom are living in poverty. In reality the returnees are being treated better than their neighbors since they are provided 4 cubic meters of wood to build new homes, 30-50 steel roofing sheets, production tools, and 11-18 months of rice on which to live. In addition, the GOL provides access roads and electricity to villages which include resettled people. The GOL has to send teams to the neighboring villages to explain why the resettled people are being given this support. At the bottom line, Yong declared, this is a security issue: the GOL is concerned that local people living in poverty and watching the returnees receive the resettlement supplies will come to believe that having supported the Lao Government was the wrong decision.

DG Yong: The 21 Girls and 5 Boys

¶21. (C) Yong mentioned that MFA is working on a visit for Vientiane-based diplomats to meet with some of the 21 Hmong girls recently released by the GOL. Returning these girls to Thailand to rejoin their parents in the Petchabun holding camp is a legal problem. They were deported from Thailand in December 2005 because they were illegal immigrants, Yong noted; how would they legally reenter Thailand? Moreover, their parents' situation in Thailand is "precarious" and temporary. The GOL is working with the RTG to have their parents returned to Laos. The next opportunity for discussion will be the upcoming meeting of the Thai-Lao Border Committee on May 18 in Thailand. Meanwhile the GOL is allocating funds for the girls to continue their education or undertake skill training to be able to earn a living.

¶22. (C) Yong promised that the GOL would never give up its efforts to "find" the 5 boys who were part of the group of 26 Hmong children detained since December 2005. He promised they will not be harmed or prosecuted. The GOL would look after them carefully.

VFM Hiem Repeats the Offer

¶23. (C) At a May 3 reception, VFM Hiem told the Ambassador that returning the Nong Khai 155 to Laos remained an absolute priority for the GOL. However, he repeated to the Ambassador the proposal DG Yong had made earlier in the day that the 155, if returned to Laos, would be free to apply for visas for resettlement abroad. In contrast to DG Yong's comments, VFM Hiem did not indicate a suitable period of time would be necessary before the returnees could begin this process with local Embassies.

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Comment

¶24. (C) Listening to UNHCR's Feller talk about her meetings with Thai officials, we were a bit surprised that she was accepting at face value the promise by Thai General Nipat, who heads the Thai delegation to the joint Thai-Lao Border Committee, that, at the May 18 Committee meeting, the Thais would be able to reverse the GOL demand that the 155 be

returned to Laos. Having VFM Hiem confirm to the Ambassador, after Hiem had himself met with Feller, that the GOL demand was still absolute seems to indicate that UNHCR may be misreading the situation -- or overly confident in the Thai ability to push the GOL to accept such a solution.

¶25. (C) The comments by both GOL officials, but especially by VFM Hiem, that the returnees would be able to go to foreign embassies and apply for immigrant visas catches our attention. DG Yong made clear that UNHCR, after it finished its activities in Laos in 1999 and closed its office in 2001, has no role to play in the eyes of the GOL. Bypassing the UNHCR to resolve the future of the 155 makes a great deal of sense from the GOL point of view. And returning the 155 to Vientiane, even briefly, sends the message to other Lao-Hmong that the ability to slip across the Thai border and reach a third country is over -- a message both the RTG and GOL want to send.

¶26. (C) Why should we be interested? We see three possible scenarios:

a) Perhaps the RTG and GOL will reach agreement at the May 18 Border Committee meeting to allow resettlement abroad for the Nong Khai 155. That would protect the UNHCR mandate and be the best way to assure the future of the group members. We would applaud this outcome, but we are concerned this is unlikely to happen.

b) We believe there is a real danger that, if GOL remains adamant as we expect, the RTG and GOL will reach agreement to simply use whatever force necessary late one night to deport the 155 to Laos. In this scenario, the international community will have absolutely no ability to play any role in protecting their welfare.

c) So it becomes interesting to see if there is a possible compromise which could be reached on a "one-time, exception, non-precedent setting" basis to somehow follow the lead VFM Hiem is providing.

¶27. (C) For example, could the 155 be brought back to Vientiane for a photo opportunity of the "return" -- and then the entire group be put on a plane the same day to go to a location (Romania?) where UNHCR and the international community could finally have access to finish processing the group for resettlement abroad?

Or: could the group be brought back for a photo op and then returned the same afternoon to Nong Khai where the UNHCR and international community screening would finally be allowed?

¶28. (C) Obviously following up with the opening we see VFM providing would have to be done with extreme care to avoid having the international community or the United States signing onto an arrangement that turns out badly. Establishing protections and guarantees for the process would require the resettlement countries, the UNHCR, and perhaps organizations such as the ICRC to be fully involved.

HASLACH